IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1121 of 2002 (S/B)

Smt. Usha Rani
W/o Sri Balesh Bawaria
R/o 201/297, Khud Buda Moghalla
Dehradun …….. Petitioner

Versus

1. State of Uttaranchal, through
its Chief Secretary
Dehradun

2. Garhwal Anusuchit Jan Jati Vikas Nigam
65-D, Rajpur Road, Dehradun through
its Managing Director …….. Respondents

Mr. P.C. Jhingan, learned Counsel for the petitioner.
Mr. Manoj Tiwari, learned Standing Counsel
for the respondent No.2.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought direction in the nature of certiorari for quashing order dated 24.04.2002 (copy Annexure-3 to the writ petition) passed by respondent No. 2, whereby the petitioner has been directed to file stay order, if any against the recovery in question, else the recovery shall be made by deduction the amount from the salary of the petitioner.

2) Brief facts of the case, as narrated in the writ petition, are that the petitioner is a clerk in Garhwal Anusuchit Jan Jati Vikas Nigam, Dehradun (respondent No. 2) and presently attached with Garhwal Mandal Vikas Nigam, Dehradun w.e.f. 01.08.2001. It is alleged that a recovery of Rs. 6648.90 was

sought to be made from the petitioner by respondent no. 2 for some loss to the Corporation between July, 1988 to August, 1989. The said recovery was challenged by the petitioner under section 16 of the payment of Wages Act, which was registered as PW Case No. 89 of 89. Vide order dated 24.11.1990 (copy Annexure-1 to the writ petition), the said petition of the petitioner was allowed by the prescribed authority under payment of Wages Act, where by the recovery was set aside as illegal. Respondent No. 2 appears to have preferred an appeal before the District Judge. Dehradun which was registered as Miscellaneous Appeal No. 130 of 1990. However, the same was also dismissed on the ground that deduction from the salary of the employee could not have been made without giving her a show cause notice as contemplated under section 10 (1-A) of payment of Wages Act. It appears that vide impugned order dated 24.04.2002 (copy Annexure-3 to the writ petition) a notice was issued against the petitioner by the respondent No. 2 asking her to produce stay order if any against the recovery as the impugned shortage of the raw material in the year 1988-89 still continues on the record. By the said order, a notice dated 24.04.2002 was also issued to the petitioner that if she fails to pay the said amount, the recovery of Rs. 32,838.80 shall be made from her salary. Aggrieved by said notice the present writ petition has been field.

3) Respondents have filed the counter affidavit and it is stated that the petitioner has caused financial loss to the respondent no. 2 and writ petition in respect amount of dispute is not maintainable at all. It is further stated in the counter affidavit that the recovery is being made as per the terms and conditions of the appointment letter of the petitioner.

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed thereto.

5) By impugned order dated 24.04.2002, the respondent no. 2 has given notice to the petitioner either to file the stay order against the recovery or to show cause why the recovery be not made from her. Instead of replying the notice to the concerned authorities, the petitioner has filed the present petition directly in the court. In the circumstances, the writ petition is premature as no order has been passed by the authority to deduct the amount in dispute from the salary of the petitioner instead she has been given an opportunity to show as to why the recovery be not made. Learned counsel for the petitioner drew my attention to the order dated 24.11.1990 passed by Prescribed Authority and copy of order dated 19.02.1992 passed by III Additional District Judge, Dehradun In Misc. Appeal No. 130 of 1990 and it is submitted that the recovery has already been held to be illegal as such no recovery can be made from the petitioner. It is settled principal of Law that the order of the trial court merges into the order of the appellate authority. That being so, it is only order dated 19.02.1992 passed by III Additional District Judge, Dehradun by which the controversy has been finally settled. In the said order while dismissing the appeal, learned III additional District Judge, Dehradun has clearly observed:

“The deductions from the salary of the respondent having been made without giving her a Show Cause Notice as contemplated under Section 10 (1-A) of the Act, the deductions are illegal.”

Therefore, it cannot be said if the recovery has been stopped finally. Rather it is open for the respondent no.2 to give opportunity under aforesaid section to the petitioner and it is only after giving her opportunity, the orders according to the rules can be passed against her for recovery of the loss in question.

6) In these circumstances, the writ petition is dismissed with the observation that the petitioner may file his reply to the impugned Show Cause Notice dated 24.04.2002 before the respondent no. 2 within a period of 15 days from today, who shall pass appropriate orders thereafter in the light of the observations passed in Judgment and Order dated 19.02.1992 in the Misc. Appeal No. 130 of 1990 by learned III Additional District Judge, Dehradun. No order as per costs.

(Prafulla C. Pant, J.)

Dt: November 1, 2004

Sweta